

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| UNITED STATES SECURITIES AND | : | |
| EXCHANGE COMMISSION, | : | |
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| Plaintiff, | : | |
| | : | <u>ORDER</u> |
| | : | 19 Civ. 4355 (LGS) (GWG) |
| COLLECTOR'S COFFEE INC., et al., | : | |
| | : | |
| Defendants. | : | |
| -----X | : | |

GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

The SEC's motion for contempt (Docket # 452) seeks to raise three grounds for contempt sanctions against Mykalai and Veronica Kontilai: (1) that Mykalai worked with Veronica to make transfers of cash from the United States to Russia for his benefit; (2) that Mykalai engaged in schemes to divert to himself insurance proceeds belonging to Collector Coffee Inc. and (3) that Mykalai intentionally destroyed evidence, including evidence in furtherance of the insurance fraud scheme. (Docket # 453 at 1-2). In addition, the motion seeks sanctions against Mykalai under the "inherent power" of the Court based on Mykalai's alleged efforts to delay proceedings in furtherance of the insurance scheme. (Docket # 453 at 2). Also before the Court is a letter (Docket # 497) stating the SEC's desire to seek contempt sanctions against Mykalai based upon Mykalai's failure to comply with a discovery order (Docket # 427) — a remedy permitted by Fed. R. Civ. P. 37(b)(2)(A)(vii).

With respect to the original motion, while Mykalai and Veronica have made legal arguments in opposition to the request for contempt sanctions, it appears there are at least some disputes of fact, including disputes regarding the admissibility or weight to be given evidence. Accordingly, the Court concludes that a hearing on the motion for contempt is required. The Court expects the parties to address the issue raised in Docket # 497 at the hearing as well. However, there has been no briefing or evidence submitted as yet regarding the request made in Docket # 497. Accordingly, the parties shall discuss the need to provide supplemental briefing in advance of the hearing regarding the matter raised in Docket # 497 and shall make joint or separate proposals on this issue.

The Court concludes that allowing each party six hours for presentation of its case and for any cross-examination of the opposing party's witnesses is sufficient. The parties shall file proposed findings of fact and conclusions of law by November 16, 2020. The hearing shall be held on December 7 and 8, 2020. The parties shall discuss any arrangements that need to be made for the appearance of witnesses and/or attorneys (and possibly the Court) by video and shall make a joint or separate proposals on this question.

The joint or separate proposals described above shall be filed on or before October 28, 2020.

SO ORDERED.

Dated: October 15, 2020
New York, New York



GABRIEL W. CORENSTEIN
United States Magistrate Judge